

ANNEX C
PLANNING SECTION

APPENDIX

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ANNEX C TO THE CHARLESTON OIL AND HAZMAT AREA CONTINGENCY PLAN
PLANNING

Reference: (a) 40 CFR 300, National Contingency Plan
(b) PL 101-380, Oil Pollution Act of 1990
(c) 33 USC 1321, Federal Water Pollution Control Act of 1977
(d) 42 USC 9601, Comprehensive Environmental Response, Compensation, and Liability Act of 1980
(e) 33 CFR 6.01-3 et seq, Captain of the Port

1. BACKGROUND. Response planning is an ongoing process that starts well before an incident occurs. It is also undertaken at several levels in an effort to ensure a consistent national, regional and local approach. The below listed groups demonstrate the various levels of this process, with each level being more narrowly focused than its predecessor.

a. National Response Team (NRT). The NRT's membership consists of 15 federal agencies with responsibilities, interests and expertise in various aspects of emergency response to pollution incidents. The EPA serves as chairman and the Coast Guard serves as vice-chairman of the NRT, except when activated for a specific incident. The NRT is primarily a national planning, policy and coordination body and does not respond directly to incidents. The NRT provides policy guidance prior to an incident and assistance as requested by an FOSC via an RRT during an incident. NRT assistance usually takes the form of technical advice, access to additional resources/equipment, or coordination with other RRTs.

b. Regional Response Team. There are 13 RRTs, one for each of the ten federal regions and Alaska, the Caribbean and the Pacific Basin. Each RRT has Federal and State representation. EPA and the Coast Guard co-chair the RRTs. The Charleston geographic area falls under the cognizance of Region IV. Like the NRT, RRTs are planning, policy and coordinating bodies, and do not respond directly to incidents. The RRTs develop Regional Contingency Plans for their regions. These plans address region specific issues and provide guidance to the FOSCs for developing their area plans. The RRTs also provide one level of review for the Area Contingency Plans. The RRTs may be activated for specific incidents when requested by the FOSC. If the assistance requested by an FOSC exceeds an RRT's capability, the RRT may request assistance from the NRT. During an incident the RRT may either be alerted by telephone or convened. The cognizant RRTs will also be consulted by the FOSC on the approval/disapproval of the use of chemical countermeasures when that decision has not been preapproved

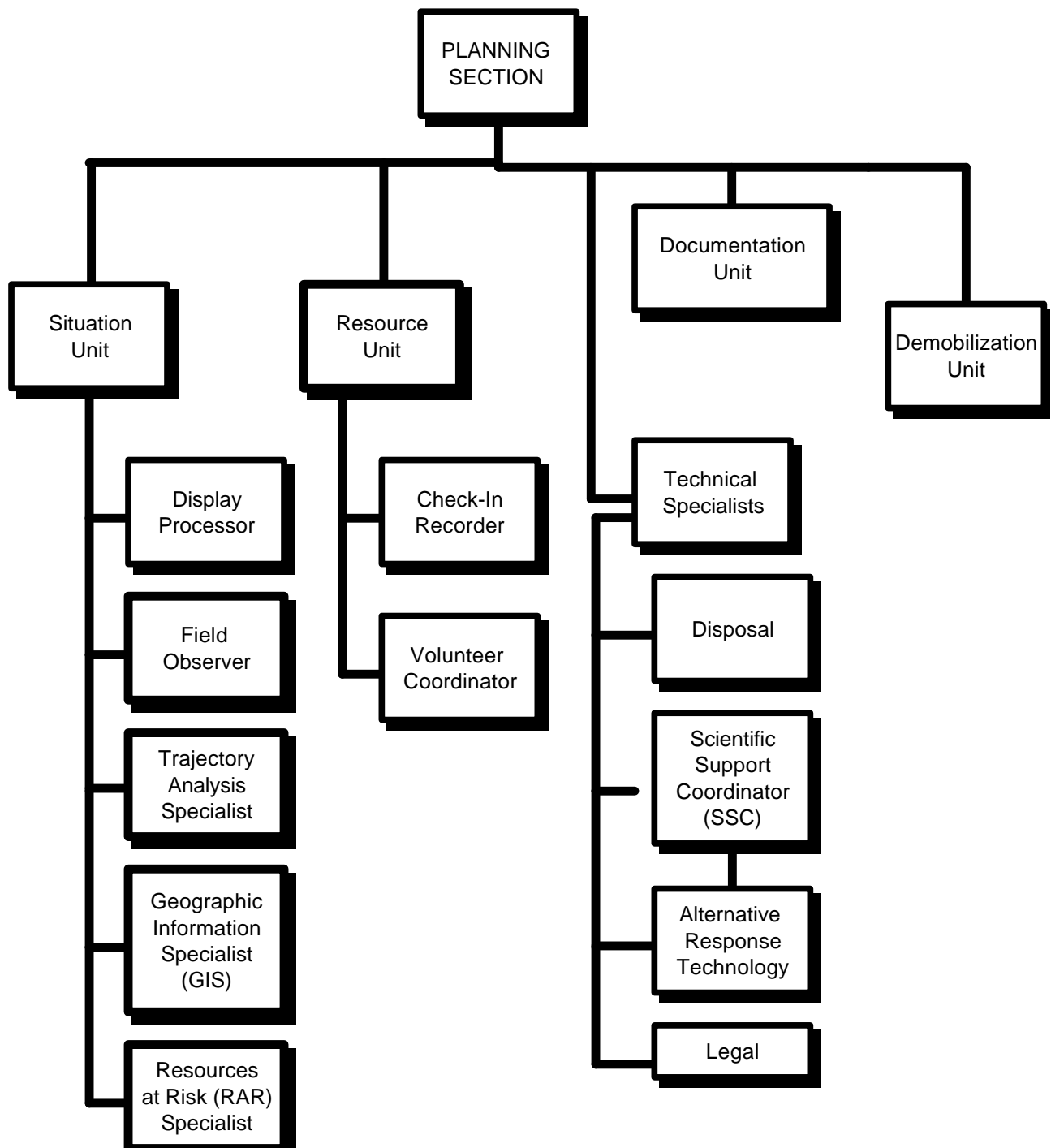
c. Local Area Committee. The primary role of the Area Committee is to act as a planning body. Area Committees are made up of experienced environmental/response representatives from Federal, State and local government agencies with definitive responsibilities for the area's environmental integrity. Each member is empowered by their own agency to make decisions on behalf of the agency and to commit the agency to carrying out roles and responsibilities as described in this plan. The predesignated Federal On-scene Coordinator (FOSC) for the area will serve as chairman of the Committee. He/she will designate the vice-chairman, select the Committee members, and provide general direction and guidance for the Committee. The FOSC should solicit the advice of the RRT to determine appropriate representatives from federal and state agencies.

4. Local Area Subcommittees. The Area Committee is encouraged to solicit advice, guidance, or expertise from all appropriate sources and establish subcommittees as necessary to accomplish the preparedness and planning tasks. Subcommittee participants may include facility owners/operators, shipping company representatives, cleanup contractors, emergency response officials, marine pilots associations, academics, environmental groups, consultants, response organizations and concerned citizens. The FOSC will appoint the subcommittee members and direct the Area Committee's development and maintenance of the Area Contingency Plan.

e. Incident Response Planning. During an actual, protracted, response a Planning Section will normally be staffed within the Unified Command.

2. PLANNING SECTION. The Planning Section is responsible for the collection, evaluation and dissemination of information relating to the current status of the incident and forecasted conditions. The Planning Section works closely with the Operations Section, at the earliest phases of the response, to develop an incident action plan. This includes the development of strategies to be used for future equipment deployment and manpower utilization. Also responsible for updating and maintaining all situation status reports for use by the Incident Commander, other sections and general briefings. The Planning Section Chief and each branch should incorporate the appropriate members from the Unified Command agencies and/or their contractors. The following Tabs identify the subunits that may be assigned to the Planning Section and their associated responsibilities.

APPENDIX I TO ANNEX C OF THE CHARLESTON OIL & HAZMAT ACP
PLANNING SECTION ORGANIZATION



TAB a TO APPENDIX I TO ANNEX C OF THE CHARLESTON OIL & HAZMAT ACP
PLANNING SECTION CHIEF

The **Planning Section Chief** is responsible for providing adequate personnel, goods and information management evaluation regarding incident status and resources. At least one Coast Guard officer shall be assigned to the Planning Section and shall:

- ◆ Review common responsibilities.
- ◆ Implement and manage the Planning Section branches and units needed to proactively accomplish Planning Section actions.
- ◆ Anticipate the need for information describing the status of the response and manage the system required to collect and disseminate response information.
- ◆ Provide detailed Incident Action Plans based on projected response needs to the Unified Command.
- ◆ Support the Unified Command by evaluating alternative strategies and tactical operation plans that anticipate changing requirements.
- ◆ Compile and display information with respect to quantity of oil, loss rate, projected total loss before spill source is secured, weather conditions, current and projected trajectory over time.
- ◆ Recommend changes to the UCS organization that anticipate response requirements.
- ◆ Evaluate and report to the Unified Command on status of Section's assigned responsibilities, as scheduled.
- ◆ Ensure the incident is fully documented and logs, records, and files are organized for use after the incident.
- ◆ Maintain Unit Activity Log (ICS 214).

TAB b TO APPENDIX I TO ANNEX C TO THE CHARLESTON OIL & HAZMAT ACP
SITUATION UNIT

The Situation Unit is responsible for collecting, processing and organizing information, preparing situation summaries, and developing projections and forecasts of future events related to the incident. The Situation Unit also prepares maps and information for use in the incident action plan. The Situation Unit shall:

- ◆ Collect, process and organize incident related information to include:
 - casualty information;
 - discharge information, observations, and forecasts;
 - field reports (e.g. POLREPs, SITREPs);
 - environmental observations and forecasts;
 - impacts to natural and economic resources; and
 - the status of response operations.
- ◆ Ensure a command post display is prepared and maintained.
- ◆ Prepare situation summaries.
- ◆ Develop projections and forecasts of future events related to the incident.
- ◆ Prepare maps and charts for incorporation in the Incident Action Plan.
- ◆ Report to the Planning Section Chief on the situation status, as scheduled.

ENCL i TO TAB b TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
DISPLAY PROCESSOR

The **Display Processor** is responsible for the display of incident status information obtained from Field Observers, resource status reports, aerial and ortho photographs, and infrared data.

- ◆ Review Common Responsibilities.
- ◆ Determine:
 - Location of work assignments.
 - Numbers, types and locations of displays required.
 - Priorities.
 - Map requirements for Incident Action Plan.
 - Time limits for completion.
 - Field Observer assignments and communications means.
- ◆ Obtain necessary equipment and supplies.
- ◆ Obtain copy of Incident Action Plan for each operational period.
- ◆ Assist Situation Unit Leader in analyzing and evaluating field reports.
- ◆ Develop required displays in accordance with time limits for completion.

ENCL ii TO TAB b TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
FIELD OBSERVER

The **Field Observer** is responsible to collect situation information from personal observations at the incident and provide this information to the Situation Unit Leader.

- ◆ Review Common Responsibilities.
- ◆ Determine:
 - Location of assignment.
 - Type of information required.
 - Time limits for completion.
 - Method of communication.
 - Method of transportation.
- ◆ Obtain copy of Incident Action Plan for the Operational Period.
- ◆ Obtain necessary equipment and supplies.
- ◆ Perform Field Observer responsibilities to include but not limited to the following:
 - Perimeters of incident.
 - Locations of oil concentration.
 - Rates of spread.
 - Weather conditions.
 - Hazards.
 - Progress of Operation resources.
- ◆ Be prepared to identify all facility locations (e.g., helispots, Division and Branch boundaries).
- ◆ Report information to Situation Unit Leader by established procedure.
- ◆ Report immediately any condition observed which may cause danger and safety hazard to personnel.
- ◆ Gather intelligence that will lead to accurate predictions.

ENCL iii TO TAB b TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
TRAJECTORY ANALYSIS SPECIALIST

The **Trajectory Analysis Specialist** is responsible for providing to the Unified Command projections and estimates of the movement and behavior of the spill. The specialist will combine visual observations, remote-sensing information, computer modeling as well as observed and predicted tidal, current and weather data to form these analyses. Additionally, the specialist is responsible for interfacing with local experts (weather service, academia, researchers, etc.) in formulating these analyses. Trajectory maps, overflight maps, tides and current data, and weather forecasts will be supplied by the specialist to the Situation Unit for dissemination throughout the Command Post.

- ◆ Review Common Responsibilities.
- ◆ Schedule and conduct spill observations/ overflights as needed.
- ◆ Gather pertinent information on tides, currents and weather from all available sources.
- ◆ Provide trajectory and overflight maps, weather forecasts, tidal and current information.
- ◆ Provide briefing on observations and analyses to the proper personnel.
- ◆ Demobilize in accordance with the Demobilization Plan.
- ◆ Maintain Unit/Activity Log (ICS 214).

ENCL iv TO TAB b TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
GEOGRAPHIC INFORMATION SYSTEM (GIS) SPECIALIST

The **Geographic Information System (GIS) Specialist** is responsible for gathering and compiling updated spill information and providing various map products to the incident. The GIS team will work with the Situation Unit and the information management officer to ensure accurate and rapid dissemination of oil spill information to the ICS.

- ◆ Review Common Responsibilities.
- ◆ Determine resource needs.
- ◆ Participate in planning meetings as required.
- ◆ Gather and compile data from the different incident-sections.
- ◆ Provide maps for various components of the incident.
- ◆ Provide status reports to appropriate requesters.
- ◆ Maintain Unit/Activity Log (ICS 214).

ENCL v TO TAB b TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
RESOURCES AT RISK (RAR) TECHNICAL SPECIALIST

The **Resources at Risk Technical (RAR) Specialist** is responsible for the identification of resources thought to be at risk from exposure to the spilled oil through the analysis of known and anticipated oil movement and the location of natural, cultural, and economic resources. The Resources at Risk Technical Specialist considers the relative importance of the resources and the relative risk to develop a priority list for protection.

- ◆ Review Common Responsibilities.
- ◆ Participate in planning meetings as required.
- ◆ Determine resource needs.
- ◆ Obtain current and forecasted status information from Situation Unit.
- ◆ Identify natural resources at risk.
- ◆ Identify archaeo-cultural resources at risk.
- ◆ Identify socioeconomic resources at risk.
- ◆ Develop a prioritized list of the resources at risk for use by the Planning Section.
- ◆ Provide status reports to appropriate requesters.
- ◆ Maintain Unit/Activity Log (ICS 214).

TAB c TO APP I TO ANNEX C TO THE CHARLESTON OIL & HAZMAT ACP
RESOURCES UNIT

The **Resources Unit** is responsible for checking assigned personnel and resources into the incident, and keeping track of the status of all resources attendant to the incident. The Resources Unit shall:

- ◆ Review common responsibilities.
- ◆ Collect, analyze, and disseminate information about the status of current and projected response resources, including:
 - personnel;
 - equipment;
 - vessels;
 - aircraft;
 - vehicles;
 - facilities;
 - materials and supplies.
- ◆ Maintain the command post display (resources allocation and deployment).
- ◆ Gather, post, and maintain incident resource status.
- ◆ Maintain master list of resources checked in at the incident.
- ◆ Prepare Organization Assignment List and Organization Chart.
- ◆ Confirm dispatch, and estimated time, of arrival for ordered resources.
- ◆ Report to the Planning Section Chief on the status of resources, as scheduled.
- ◆ Maintain Unit Activity Log (ICS 214).

ENCL i TO TAB c TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
CHECK-IN RECORDER

Check-in recorders are needed at each check-in location to ensure that all resources assigned to an incident are accounted for.

- ◆ Review Common Responsibilities.
- ◆ Obtain work materials, including Check-in Lists (ICS Form 211).
- ◆ Establish communications with the Communication Center.
- ◆ Post signs so that arriving resources can easily find the check-in locations.
- ◆ Record check-in information on Check-in Lists (ICS Form 211).
- ◆ Transmit check-in information to Resources Unit on regular pre-arranged schedule.
- ◆ Forward completed Check-in Lists and Status Change Cards to the Resources Unit.

ENCL ii TO TAB c TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
VOLUNTEER UTILIZATION COORDINATOR

The **Volunteer Utilization Coordinator** manages procedures that allow for the use of volunteers in such areas as beach surveillance, logistical support, bird and wildlife treatment and scientific investigations are outlined in the National Contingency Plan. Normally, volunteers should not be used for physical removal of pollutants. If the pollutant is toxic, or if in the judgment of the Incident Commander other dangerous conditions exist, volunteers shall not be permitted at on-scene operations.

It is probable that most clean up activities following an oil spill will take place primarily in the public domain (e.g., public water and beaches). Most medium and major oil spills may attract large numbers of volunteers who wish to assist with the clean up activities. Oil spill contractors and private companies have no authority to direct the activities of private individuals who enter the public domain to help in cleanup operations. Normally oil spill contractors cannot order volunteers off the scene on their own authority. With regard to practicality, it often requires a considerable number of trained personnel to organize, direct, and supervise large groups of volunteers. If adequate supervision is not provided, the volunteers could do more harm than good. Finally, serious problems could arise as to compensation, feeding, sheltering, and health care of volunteers.

If it is decided that volunteers are able to make useful contributions to the resolution of the pollution incident, the Volunteer Unit shall:

- ◆ Manage and coordinate the processing of private individuals and public groups volunteering to perform response operations.
- ◆ Plan, document, and account for volunteer coordination and processing.
- ◆ Manage the training, qualification, and certification process needed to convert private volunteers into qualified emergency response workers.
- ◆ Establish and manage volunteer processing sites needed to inform potential volunteers of response requirements.
- ◆ Coordinate authorized response assignments made to qualified emergency response workers.
- ◆ Identify additional resources and logistics support needed to support volunteer processing.
- ◆ Report to the Planning Section Chief on the status of volunteer processing, as scheduled.

TAB d TO APPENDIX I TO ANNEX C TO CHARLESTON OIL & HAZMAT ACP
DOCUMENTATION/HISTORIAN UNIT

The **Documentation/Historian Unit Director** is responsible for maintaining accurate and complete incident files, including an accurate chronology of events, providing duplication services to incident personnel; filing maintaining and storing incident files for legal, analytical, and historical purposes. The Documentation/Historian Unit shall:

- ◆ Maintain an accurate chronology of the entire event.
- ◆ Develop and maintain the filing system for all incident files.
- ◆ Establish and maintain the master computer based response/event log.
- ◆ Provide duplicating services to incident personnel.
- ◆ Maintain and store files for legal, analytical and historical purposes.
- ◆ Maintain a clip file of any media items produced as a result of the incident.
- ◆ Provide daily reports of events to Operations and Planning Section Chiefs.

TAB e TO APPENDIX I TO ANNEX C TO THE CHARLESTON OIL & HAZMAT ACP
DEMOBILIZATION UNIT

Depending on the scope of resource commitment, this particular evolution could involve everyone. To forecast when it would occur and determine when to release resources due diminished effectiveness the National Strike Force, District Response Advisory Team, Scientific Support Coordinator and others should be consulted.

Responsibilities of the **Demobilization Unit** include coordinating the transition of resources from the incident back to their original location. The Demobilization Unit shall:

- ◆ Carefully monitor personnel and equipment utilization to ensure each is stood down or reassigned when appropriate.
- ◆ Ensure the safe, orderly, and cost-effective movement of personnel from the site of the incident when their services are no longer required.
- ◆ Report to the Planning Section Chief on status of past and future demobilization efforts, as scheduled.
- ◆ Publish plan for demobilization including scheduling of response gear cleaning.

TAB f TO APPENDIX I TO ANNEX C TO THE CHARLESTON OIL & HAZMAT ACP
TECHNICAL SPECIALISTS

Technical Specialists are advisors with special skills needed to support the incident. Technical Specialists may be assigned anywhere in the UCS/ICS organization, as is evidenced in this plan. If necessary, Technical Specialists may be formed into a separate unit. The Planning Section will maintain a list of available specialists and will assign them where needed. The following enclosures are examples of some of the positions that may be utilized during a response.

Many of the positions listed as enclosures to this Tab also appear in other portions of the organization. This was done purposely, to demonstrate the utilization of these Techs in various portions in the organization as the incident progresses and the staff size expands and contracts.

ENCL i TAB f TO APPENDIX I TO ANNEX C TO THE CHARLESTON O&H ACP
LEGAL SPECIALISTS

The **Legal Specialist** will act in an advisory capacity during a response.

- ◆ Review Common Responsibilities.
- ◆ Participate in planning meetings, if requested.
- ◆ Advise the Unified Command on legal issues relating to in-situ burning, use of dispersants and other alternative response technology.
- ◆ Advise the Unified Command on legal issues relating to Natural Resource Damage Assessment.
- ◆ Advise the Unified Command on legal issues relating to investigation.
- ◆ Advise the Unified Command on legal issues relating to finance and claims.
- ◆ Advise the Unified Command on response related issues.
- ◆ Maintaining a Unit/Activity Log (ICS 214).

EXH 1 TO ENCL i TAB f TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
FEDERAL ENVIRONMENTAL STATUTES

1. RIVERS AND HARBORS ACT OF 1899.

a. Federal Citation: 33 USC 401 et seq.

b. Primary Federal Regs: 33 CFR Parts 320 through 323.

c. Summary of Criminal Provisions: 33 USC 403 prohibits the un-permitted obstruction of any navigable waterway of the U.S.; includes building piers, wharves, jetties, etc. and excavating, dredging or otherwise modifying course, location, condition or capacity of navigable waters. 33 USC 407 (a.k.a. "The Refuse Act"), prohibits the throwing, discharging, depositing of any refuse into navigable waters or the placement of refuse on the banks of navigable waters where they are liable to be washed into navigable waters.

d. Elements of Selected Offenses:

1. 33 USC 403 and 406.

- Person or Corporation;
- obstructs, builds, excavates, fills, alters the course, condition, or capacity;
- of any navigable water of the U.S.;
- without a permit.

2. 33 USC 407 and 411.

- Person or Corporation;
- throws, discharges or deposits (or causes, suffers or procures such);
- from ship, barge, shore, etc.;
- any refuse matter of any kind or description;
- into navigable water of U.S.;
- without a permit.

OR

- Person or Corporation;
- places any material on bank of navigable water; in position where it is liable to be washed into water by tides, etc.;
- thereby possibly impeding navigation.

e. Penalties. Misdemeanor level offenses with maximum 1 year imprisonment and/or fines of up to \$100,000 for individuals and \$200,000 for corporations (see Alternative Fines Act 18 USC 3571). Violations of section 407/411 have mandatory minimum imprisonment of 30 days and fine of \$500. Violations of section 403/406 have mandatory minimum fine of \$500.

f. Miscellaneous Points.

- 5 year statute of limitations.
- Need proof of navigable water (not just waters of U.S.).
- Do not need proof of a point source.
- "Refuse" is very, very broad term - but does not include liquid municipal sewage.

2. **CLEAN WATER ACT (CWA) OF 1972 (a/k/a Federal Water Pollution Control Act).**

a. Federal Citation: 33 USC 1251 et seq.

b. Primary Federal Regs: 33 CFR Parts 324 to 336; 40 CFR Part 122-136, Part 401 et seq.

c. Summary of Criminal Provisions: Governs discharge of pollutants into waters of the U.S.; Majority of violations will fall into the following categories: (1) unpermitted (NPDES or 404) discharge of pollutants into waters of the U.S.; (2) discharges of pollutants into sewers systems/pretreatment violations; (3) knowing endangerment, i.e., placement of another in imminent danger of death or serious bodily injury during knowing discharge of pollutants; (4) false statements and/or tampering with monitoring devices; and (5) spills of oil or hazardous substances.

In additions, negligent or knowing violations of any of the following provisions are also subject to criminal penalties pursuant to 1319 (c):

1. Effluent discharge limitations (1311);
2. Water quality-based effluent limitations (1312);
3. New source performance standards (1316);
4. Permit requirements for discharge under an approved aquaculture project (1328);
5. Permit requirements for disposal of sewage sludge that results in any pollutants entering into the navigable waters (1345).

d. Elements of Selected Offenses:

1. 33 USC 1311(a) & 1319(c) - Direct Discharges:

- Any person who;
- knowingly/negligently discharges;
- a pollutant;
- from a point source;
- into waters of the U.S.;
- without an NPDES permit or in violation of a permit condition.

2. 33 USC 1317(d) and 1319(c):

- Any person who;
- knowingly negligently;
- operates a source;
- in such a manner as to result in a violation;
- of any effluent standard or prohibition or pretreatment standard.

3. 33 USC 1321 (b) (3) and 1319 (c):

- Any person who;
- discharges oil or hazardous substances;
- into or upon the navigable waters of U.S.;
- adjoining shorelines, or into or upon the waters of the contiguous zone.

OR

- in connection with activities under the Outer Continental Shelf Act of the Deep Waters Port Act of 1974.

OR

- which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the U.S.;
- in a reportable quantity.

4. 33 USC 1319 (c) - Pretreatment Violations:

- Any person who;
- knowingly/negligently;
- introduces into sewer system or POTW;
- a pollutant or hazardous substance which he/she knew or reasonably should have known would cause personal injury or property damage;

OR

- (was) other than in compliance with all applicable Federal, State, or local requirements or permits;

OR

- causes such treatment works to violate its effluent limits or conditions of its permit.

5. 33 USC 1319(c) (3) - Knowing Endangerment:

- Any person who;
- knowingly violates 1311, 1312, 1313, 1316, 1317, 1318, 1328, or 1345, or any permit condition or limitation implementing these sections contained in permits issued pursuant to 1342 or 1344;
- and knew at the time that he thereby put another person in imminent danger of death or serious bodily injury.

6. 33 USC 1319 (c) (4) - False Statements:

- Any person who;
- knowingly;
- makes a false material statement, representation, or certification in any application, record, plan or other document filed or maintained under the act;

OR

- falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act.

7. 33 USC 1321(b)(5):

- Any person in charge of a vessel or of an onshore facility or an offshore facility who;
- fails to notify the designated Federal Agency as soon as he/she has knowledge;
- of any discharge of a "reportable quantity";
- of oil or a hazardous substance;
- from the vessel or facility;
- into navigable waters of U.S., adjoining shorelines, or into or upon the waters of the contiguous zone.

e. Penalties. Misdemeanor level offense for negligent violations with maximum 1-year imprisonment; fine of greater of either fines established by Alternative Fines Act, 18 USC 3571 <1> or \$25,000 per day of violation. Minimum mandatory fine of \$2,500.

Felony level offense for knowing violations have maximum 3 years imprisonment. Maximum fine is greater of either fine established by Alternative Fines Act or \$50,000 per day of violation. Minimum mandatory fine of \$5,000.

Maximum penalty for conviction of Knowing Endangerment provision is maximum 15 years imprisonment and/or \$250,000 fine; maximum penalty for corporation is \$1,000,000.00. Penalties doubled on second conviction of either misdemeanor or felony.

NOTE: The Alternative Fines Act provides for the following fines to be imposed: individuals convicted of misdemeanor \$100,000.00; corporations convicted of misdemeanor \$200,000.00; individuals convicted of felony \$250,000.00; corporations convicted of felony \$500,000.00.

The Oil Pollution Control Act of 1990 (OPA) provides for 5 years imprisonment and/or a fine in accordance with the Alternative Fines Act for violations of 1321(b) (5).

f. Miscellaneous Points.

- 5 year statute of limitations.
- Need proof of point source for direct discharge cases.
- Need proof of criminal negligence or knowing violations.
- "Waters of U.S." is very broad.

- 1319 amended in 1990, 1987, 1977
- 1321 amended in 1990, 1982, 1980, 1978, 1977
- Notification received under 1321(b)(5) may not be used against the natural person reporting the spill in a criminal case (except perjury or false statement).

3. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), (a/k/a Solid Waste Disposal Act) enacted in 1976.

- a. Federal Citation: 42 USC 6901 et seq.
- b. Primary Federal Regs: 40 CFR Part 260 et seq.
- c. Summary of Criminal Provisions: Governs transportation, storage, treatment and disposal of hazardous waste; prohibits the omission of information or making false statements; the destruction or alliterating of/or failure to keep required records; prohibits the exportation of hazardous waste to another country without its consent; storage/treatment/transportation of used oil in violation of permit/ and the knowing endangerment, i.e., placement of another in imminent danger or death or serious bodily injury during transportation, storage, treatment or disposal of hazardous waste.
- d. Elements of Selected Offenses:
 - 1. 42 USC 6928(d)(1) - Transportation Violation.
 - Any person who;
 - knowingly transports or causes to be transported;
 - a hazardous waste;
 - to a facility that does not have interim status or a permit.
 - 2. 42 USC 6928(d)(2)(A) - Treatment, Storage, or Disposal Without a Permit.
 - Any person who;
 - knowingly treats, stores, or disposes of;
 - a hazardous waste;
 - without a permit.
 - 3. 42 USC 6928(d)(2)(B) - Treatment, Storage, or Disposal In Violation of a Permit.
 - Any person who;
 - knowingly treats, stores, or disposes of;
 - hazardous waste;
 - in knowing violation of;
 - a material permit condition.

4. 42 USC 6928(d)(C) - Treatment, Storage, or Disposal In Violation of Interim Status Standards
 - Any person who;
 - knowingly treats, stores, or disposes of;
 - hazardous waste;
 - in knowing violation of;
 - a material condition of any applicable interim status standards or regulations.
5. 42 USC 6928(d)(3) - False Statements
 - Any person who;
 - files, maintains, or uses a document for compliance with RCRA hazardous waste provisions;
 - and knowingly;
 - omits material information or makes a false material statement or representation in the document.
6. 42 USC 6928(d)(4) - Alteration, Destruction, Concealment of Records.
 - Any person who;
 - generates, stores, treats, transports, disposes of, exports, or otherwise handles hazardous waste or used oil not listed or identified as hazardous waste;
 - and was required to maintain of file records;
 - knowingly;
 - destroys, alters, conceals or fails to file such records.
7. 42 USC 6928(d)(5) - Transportation without a Manifest.
 - Any person who;
 - knowingly transports or causes to be transported
 - a hazardous waste or used oil;
 - without a required manifest.
8. 42 USC (d)(6) - Exportation of Hazardous Waste without Consent or in Violation of Agreement.
 - A person who;
 - knowingly;
 - exports;
 - hazardous waste;
 - without the consent of the receiving country.

OR

 - in violation of terms of any international agreement regarding the export of hazardous waste between the U.S. and the receiving country.

9. 42 USC 6928(d)(7) - Mishandling Used Oil.

- Any person who;
- knowingly;
- treats, stores, disposes of, transports or causes to be transported or otherwise handles used oil (not otherwise a hazardous waste);
- in knowing violation of any material condition or requirement of a permit.

OR

- in knowing violation of any material condition or requirement of an applicable regulation or standard.

10. 42 USC 6928(e) - Knowing Endangerment.

- A person who;
- knowingly;
- treats, stores, disposes of, or exports a hazardous waste or used oil in violation of any provision 6928(d)(1) through (7);
- and knew at the time that he/she thereby put another person in imminent danger of death or serious bodily injury.

e. Penalties. Felony level offenses with maximum 2 to 15 years imprisonment and/or fines established by Alternative Fines Act (18 USC 3571). For knowing endangerment crimes, the fine is \$250,000 for individuals and \$1,000,000 for organizational defendants. [With continuing offenses 42 USC 6928 fines may be preferable.] Penalties doubled on second conviction (except for knowing endangerment).

f. Miscellaneous Points.

- Within 5 year statute of limitations.
- Need proof of waste.
- Need proof of hazardous waste.
- Proof of knowing violation.
- 6298 amended in 1986, 1984, 1980, 1978.

4. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA) (a/k/a Superfund).

- a. Federal Citation: 42 USC 9601 et seq.
- b. Primary Federal Regs: 40 CFR part 302
- c. Summary of Criminal Provisions: Governs the notification and clean up of spills or releases of hazardous substances into the environment.
- d. Elements of Selected Offenses:

1. 42 USC 9603(b)

- A person who is the owner or operator of a facility at which hazardous substances were stored, treated or disposed of without a permit or interim status.

OR

- Any person who transports hazardous substances to a facility without a permit or interim status;
- Knowingly;
- Destroys, mutilates, erases, disposes of, conceals, or otherwise renders unreadable records subject to regulation;
- Prior to expiration date of the holding time for the records.

e. Penalties. Felony level offense with 3 years maximum imprisonment. Fines established by Alternative Fines Act (18 USC 3571). Maximum imprisonment 5 years on second conviction.

f. Miscellaneous Points.

- Enactment dates: CERCLA in 1980, Superfund Amendments and Reauthorization Act (SARA) in 1986.
- 5 year statute of limitations.
- Proof of hazardous substance not necessary to be a waste.
- Proof of reportable quantity.

5. MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA) OF 1972, (a/k/a Ocean Dumping Act).

a. Federal Citation: 33 USC 1401 et seq.

b. Primary Federal Regs: 40 CFR Part 220

c. Summary of Criminal Provisions: Governs unpermitted transportation of any material for the purpose of dumping it into ocean waters.

d. Elements of Selected Offenses:

1. 33 USC 1415(b)(1).

- Knowing violation of the act, regulations, or permits issued pursuant to the act (e.g., record keeping requirements; dumping location; dumping rate; transportation of any material from the United States, or by a U.S. flagged vessel, or any agency of the United States government, from any location, for dumping into the ocean except in compliance with a permit; dumping within the territorial seas or the contiguous zone of any material transported from a location outside the United States except in compliance with a permit).

2. 33 USC 1415(b)(2).

- Knowing violation of any provision of the act by dumping medical wastes into the ocean.

e. Penalties. Misdemeanor level offense with maximum 1 year imprisonment and/or fines established by the Alternative Fines Act (18 USC 3571). For violations of Section 1415(b)(2), the maximum is 5 years imprisonment and a fine of \$250,000. This subsection also has a forfeiture provision. [With continuing offenses 33 USC 1415(b), (c) fines may be preferable.]

f. Miscellaneous Points.

- 5 year statute of limitations.
- Proof of knowing violation.
- 1411 amended in 1974.
- 1415 amended in 1988.

6. **CLEAN AIR ACT (CAA).**

a. Federal Citation: 42 USC 7401 et seq.

b. Primary Federal Regs: 40 CFR Part 61

c. Summary of Criminal Provisions: Pursuant to 42 USC 7413(c), the knowing violation of any of the following constitute a crime.

- A state implementation plan (7410);
- An order to comply with a state implementation plan (7413(a)(1);

Any requirement or prohibition regarding:

- new source performance standards (7411(e);
- standards relating to the release of hazardous pollutants (7412);
- inspections (7414);
- solid waste combustion (7429);
- preconstruction requirements (7475(a);
- any order relating to preconstruction requirements (7477);
- emergency orders (7603);
- permits (7661a(a), 7661b(c);
- acid deposition control;
- stratospheric ozone control;
- including any requirement of any rule, order, waiver, or permit promulgated under the sections regarding these matters, or the payment of any required fee.

d. Penalties. Five years maximum imprisonment and/or fines as set forth in the Alternative Fines Act. Penalties doubled on second conviction.

Additional criminal violations include:

1. 42 USC 7413(c)(2). Knowing false statements and knowing omissions in required records or reports, and tampering with monitoring devices;

Penalties. 2 year maximum imprisonment; fines as set forth in Alternative Fines Act (18 USC 3571). Penalties doubled on second conviction.

2. 42 USC 7413(c)(3). Knowing failure to pay a fee.

Penalties. 1 year maximum imprisonment; fines as set forth in Alternative Fines Act (18 USC 3571). Penalties doubled on second conviction.

3. 42 USC 7413(c)(4). Negligent endangerment. Negligent release of a hazardous air pollutant which thereby negligently places another in imminent danger of death or serious bodily injury.

Penalties. 1 year maximum imprisonment; fines as set forth in Alternative Fines Act (18 USC 3571). Penalties doubled on second conviction.

4. 42 USC 7413(c)(5)(A). Knowing release of a hazardous air pollutant which the person knows at the time places another in imminent danger of death or serious bodily injury.

Penalties. 15 years maximum imprisonment; individual fines as set forth in the Alternative Fines Act (18 USC 3571), organizational defendants can be fined not more than \$1,000,000 for each violation. Penalties double on second conviction.

e. Elements of Offenses Relating to Asbestos Violations:

1. 42 USC 7413(c).

- Owner/Operator of stationary source containing at least 60 linear feet of friable asbestos on pipes or 160 square feet of friable asbestos on other facility components.
- Knowingly demolished that source
- In violation of the asbestos work practice standards.

f. Miscellaneous Points.

- Within 5 year statute of limitations.
- Necessary quantity of friable asbestos.
- Proof of actual emission (?).
- Proof of criminal intent.

7. TOXIC SUBSTANCES CONTROL ACT (TSCA) (enacted in 1976).

- a. Federal Citation: 15 USC 2601 et seq.
- b. Primary Federal Regs: 40 CFR Part 761
- c. Summary of Criminal Provisions: Generally, TSCA regulates the manufacture, distribution in commerce and use and disposal of certain chemical substances. There are a variety of possible criminal violations under TSCA, including a knowing or willful violation of any of the following:
 - 1. Rules or orders under which EPA may require testing of chemical substances and mixtures if it finds the substance presents and unreasonable risk of injury to health or the environment (2614(1)(A));
 - 2. Any requirement under which manufacturers must give premanufacture notice to EPA before manufacturing any new chemical or existing chemical for a significant new use, and under which EPA may require submission of these data (2614(1)(B));
 - 3. Any requirement under which EPA may impose controls on chemicals including a ban on manufacture or use of the chemical (2614(1)(C));
 - 4. Any requirement of the Asbestos Hazard Emergency Response Act having to do with the abatement of asbestos hazards in schools (2614(1)(d));
 - 5. Use for commercial purposes a chemical manufactured, processed, or distributed in violation of sections 2604 or 2605 or any rule or order under the same;
 - 6. Failure or refusal to establish or maintain records, submit reports, notices or other information, or permit access to records;
 - 7. Failure or refusal to permit entry or inspection.
- d. Penalties. Misdemeanor level offenses with maximum 1 year imprisonment and/or fines the greater of either of those established by Alternative Fines Act or \$25,000 per day of violation.

8. FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).

- a. Federal Citation: 7 USC 136 et seq.
- b. Primary Federal Regs: 40 CFR Parts 162 and 165
- c. Summary of Criminal Provisions: Governs use of pesticides. 7 USC 136j and 1 (b) provides criminal penalties for the knowing commission of any of the following offenses (inter alia):

- Distribution or sale of any unregistered pesticide, or pesticide whose registration has been cancelled (136j(a)(1)(F));
- Distribution or sale of any pesticide which is adulterated or misbranded (136j(A)(1)(E));
- Detachment, alteration, defacement, or destruction in whole or part of any labeling required under FIFRA (136j(a)(2)(C));
- Use of a registered pesticide in a manner inconsistent with its labeling (136j(a)(2)(C));
- Falsification of all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to registration of establishments (136e), any records required to be maintained, any report filed, or any information marked as confidential and submitted to the Administrator (136j (a)(2)(M));
- Falsification of all or part of any information relating to the testing of any pesticide, including any ingredient, metabolite, or degradation product thereof, as well as the nature of any protocol, procedure, substance, organism, or equipment used, observation made, or conclusion or opinion formed that will be submitted to the Administrator, or that the person knows will be submitted to the Administrator or become part of any required records (136 (a)(2)(Q)).

d. Penalties. Misdemeanor level offenses with maximum 1-year imprisonment for commercial-type violators, maximum 30 days imprisonment for private-type violators and/or fines established by the Alternative Fines Act (18 USC 3571).

f. Miscellaneous Points.

- Within 5 year statute of limitations.
- Status of Violator.
- Proof of criminal intent.
- 136j and 1361 enacted in 1972 and amended in 1978, 1988.

9. EMERGENCY PLANNING & COMMUNITY RIGHT TO KNOW ACT (EPCRA), (enacted in 1986).

a. Federal Citation: 42 USC 11001 et. seq.

b. Primary Federal Regs: 40 CFR Parts 302, 355.

c. Summary of Criminal Provisions: Establishes requirements for Federal, state and local governments and industry regarding emergency planning and "community right-to-know" reporting hazardous and toxic chemicals.

d. Elements of Offense:

1. 42 USC 11045(b)(4)

- Release of reportable quantity of hazardous substance requiring notice to be given;
- From a facility at which a hazardous chemical is produced, used or stored;
- The defendant was the owner or operator of the facility;
- The defendant knew of the release;
- The defendant willfully failed to provide notice to the appropriate state and local agencies as required.

e. **Penalties.** Fine of not more than \$25,000, or imprisonment for not more than 2 years, or both. For a second or subsequent conviction, the person shall be fined not more than \$50,000 or imprisoned for not more than 3 years, or both. The Alternative Fines Act, 18 USC 3571, applies to EPCRA. This Act allows a sentencing judge, when appropriate, to exceed the statutory maximum of \$25,000 and to impose the greater of (1) \$250,000 or (2) twice the gross gain or loss that results from the offense. The \$250,000 fine is increased to \$500,000 if an organization has been charged.

10. **SAFE DRINKING WATER ACT, (enacted in 1974).**

- a. Federal Citation: 42 USC 300(f) et. seq.
- b. Primary Federal Regs: 40 CFR Parts 141-143
- c. Summary of Criminal Provisions: Protects public water supplies and systems.
- d. Elements of Offense:

1. 42 USC 300(i)(1):

- Any person;
- Who tampers, attempts to tamper, or threatens to tamper;
- With a public water system;
- With the intention of harming persons.

Penalties. Imprisonment for not more than 5 years, and/or a fine in accordance with Title 18, or both; if an attempt, the maximum prison term is 3 years.

2. 42 USC 300(h)(2):

- Any person;
- Who willfully violates
- Any requirement of an applicable UIC program.

Penalties. Fine not more than \$25,000 per day of violation, or imprisonment for not more than 3 years, or fine in accordance with Title 18, or any combination of these.

3. 42 USC 300(h)(3)(c)(2).

- Any person;
- Who willfully;
- Operates a new underground injection well;
- Without authorization;
- In a designated "sole source aquifer" area
- During the period before UIC program takes effect.

Penalties. Fine of not more than \$10,000 per day of violation

4. 42 USC 300(j)(e)(1).

- Any person;
- Who knowingly;
- Fails to comply;
- With an order issued under 300(c)(1) regarding provision of water treatment chemicals.

Penalties. Fine of not more than \$5,000 for each failure to comply.

11. **HAZARDOUS MATERIAL TRANSPORTATION ACT.**

- a. Federal Citation: 49 USC 1801 et. seq.
- b. Primary Federal Regs: 49 CFR Parts 171-180
- c. Summary of Criminal Provisions: To protect the public from the risks associated with the transportation of hazardous materials.

d. Elements of Offense:

1. 42 USC 1804(f) and 1809(b):

- Any person;
- Knowingly;
- Alters, removes, defaces, destroys, or otherwise tampers with;
- Any marking, label, placard, or description on a document required by this title or a regulation under this chapter.

OR

- Any package, container, motor vehicle, rail freight car, air craft, or vessel used for the transportation of hazardous materials.

2. 42 USC 1809(b)

- Any person who;
- Willfully;
- Violates a provision of this subtitle or an order or regulation.

e. Penalties. Maximum of 5 years imprisonment and/or fines as set forth in the Alternative Fines Act.

12. ENDANGERED SPECIES ACT OF 1973, (as amended 1976, 1978, 1979, 1982, 1986, and 1989).

a. Federal Citation: 16 USC 1531 et. seq.

b. Primary Federal Regs: 50 CFR Parts 17.1 et. seq.

c. Summary of Criminal Provisions: Provides for identification of plant and animal species in danger or extinction, for protection of individual members of the species from direct or interference and for protection from indirect harm caused by damage to the species' habitat. Major offenses include harming or taking endangered species.

d. Elements of Offense:

1. 16 USC 1540(b).

- Any person who;
- Knowingly;
- Imports, exports, takes, transports, sells, purchase, or receives in interstate or foreign commerce;
- Any species listed as endangered or threatened.

e. Penalties. Criminal misdemeanor penalties of up to 1 year imprisonment, fines pursuant to Alternative Fines Act, or both, for knowing violations of prohibitions relating to endangered species; knowing violations of prohibitions relating to threatened species, or any other requirement or restriction, are subject to penalties of up to 6 months in prison, fine pursuant to Alternative Fines Act, depending on the violation, or both.

f. Miscellaneous Points.

- Knowing violation of any provision of this Act, of any permit or certificate issued hereunder, or of any regulation.
- NOTE: protection from bodily harm is a defense 1540(b)(3).
- Forfeiture Provision: All fish, wildlife, and plants subject to civil action. All fish, wildlife, and plants, guns, traps, nets, other equipment, vessels, vehicles, and aircraft subject to criminal conviction.

13. MIGRATORY BIRD TREATY ACT OF 1918, as amended 1936, 1960, 1969, 1974, 1978, 1986, and 1989.

a. Federal Citation: 16 USC 703 et. seq.

b. Primary Federal Regs: 50 CFR Parts 10, 20, and 21

c. Summary of Criminal Provisions: Protects migratory birds listed in regulations from any pursuit, killing, or possession except as permitted by regulation or permit.

d. Elements of Offense:

1. 16 USC 707(a) - Misdemeanor Offenses

- Any person who;
- Takes, possesses, captures, kills, sells, etc.
- A migratory bird as defined in 50 CFR 10 or any part, nests, eggs, or product thereof;
- Unless permitted or otherwise authorized.

2. 16 USC 707(a) - Felony Offenses

- Any person who;
- Knowingly;
- Takes by any manner whatsoever any migratory bird with intent to sell, offer to sell, barter or offer to barter any migratory bird;
- Unless permitted or otherwise authorized.

e. Penalties.

Felony - up to 2 years imprisonment and/or \$250,000 fine per individual or \$100,000 fine per organization.

Misdemeanor - up to 6 months of imprisonment and/or \$5,000 fine per individual or \$10,000 fine per organization.

14. **LACEY ACT**

a. Federal Citation: 16 USC 3371-3378; 18 USC 42

b. Primary Federal Regs: None Listed

c. Summary of Criminal Provisions: Umbrella statute to provide additional protection to fish, wildlife, and plants that were taken, possessed, transported or sold in violation of state, tribal, foreign, or U.S. law.

- Regulates importation of injurious species.
- Regulates marking of containers that contain fish, wildlife or plants and are shipped in interstate or foreign commerce.
- Provides for humane shipment of fish and wildlife.

d. Elements of Offense:

1. 16 USC 3373(d)(1)

- Any person who;
- Knowingly;
- Imports or exports any fish or wildlife or plants in violation of any provision of this chapter (other than section 3372(b) of this title).

OR

- Violates any provision of this chapter (other than section 3372(b) of this title) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase fish or wildlife or plants with a market value in excess of \$350;
- Knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation.

Penalties. Imprisonment for not more than 5 years and/or a fine of up to \$250,000 per individual and \$500,000 per organization.

2. 16 USC 3373(d)(2)

- Any person;
- Knowingly;
- Engages in conduct prohibited;
- And in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation.

Penalties. Imprisonment for not more than 1 year and/or fine up to \$100,000 per individual, \$200,000 per organization.

15. DEEP WATER PORTS ACT

- a. Federal Citation: 33 USC 1514(a)
- b. Primary Federal Regs: None Listed
- c. Summary of Criminal Provisions: Willful violation of ownership, construction, and operation requirements.
- d. Penalties: Imprisonment of not more than 1 year and/or a fine of the greater of either \$25,000 per day of violation or fines pursuant to 18 USC 3571, the Alternative Fines Act.

16. ACT TO PREVENT POLLUTION FROM SHIPS

- a. Federal Citation: 33 USC 1908(a)
- b. Primary Federal Regs: None Listed.
- c. Summary of Criminal Provisions: Knowing violation of the MARPOL Protocol, the Act, or regulations relating to wastes from ships, including garbage, oil and hazardous

substances.

d. Penalties: Imprisonment of not more than 6 years and/or fines as set for in 18 USC 3571, the Alternative Fines Act.

17. **OUTER CONTINENTAL SHELF LANDS ACT**

a. Federal Citation: 44 USC 1350(c)

b. Primary Federal Regs: None Listed.

c. Summary of Criminal Provisions: Knowing and willful commission of any of the following acts: > Violation of a lease, license, permit, regulation or

- designed to protect health, safety, or the environment or to conserve natural resources;
- Falsification of any required document or record;
- Falsifying or tampering with a monitoring device or method or record;
- Revealing confidential data.

d. Penalties: Imprisonment for not more than 10 years and/or fine of the greater of up to \$100,000 for each day of violation or fines established by the Alternative Fines Act of 18 USC 3571.

EXH 2 TO ENCL i TAB f TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
STATE ENVIRONMENTAL STATUTES

1. SOUTH CAROLINA'S ENVIRONMENTAL STATUTES.

a. The Pollution Control Act, S.C. Code of Laws, 48-1-10 to 48-1-350.

1. 48-1-90 - Outlaws disposal of organic or inorganic matter including sewage, industrial waste and other wastes, in South Carolina waters, ambient air, soil or land without a permit from DHEC.
2. 48-1-340 - Outlaws knowing false statements, representations or certifications in applications or other documents required to be made or filed with DHEC; outlaws falsifying methods and tampering with monitoring devices.
3. 48-1-320 - Criminalizes willful or negligent violations of the Pollution Control Act, any rule or regulation promulgated pursuant thereto, permit, or determination by DHEC; misdemeanor provision which provides for a fine of not less than \$500 nor more than \$25,000 for each day's violation and/or imprisonment for not more than 2 years

b. Hazardous Waste Management Act, S.C. Code of Laws, 44-56-10 to 44-56-210.

1. 48-56-13 - Outlaws generation, storage, transportation, treatment, or disposal of hazardous wastes in contravention of DHEC regulations, permits, or orders.
2. 44-56-140(c) - Criminalizes willful violations of 44-56-130; misdemeanor provision which provides for a fine of not more than \$25,000 per day and /or imprisonment for not more than one year for a first offense and a fine of not more than \$50,000 per day and/or imprisonment for not more than two years for a second or subsequent offense.

c. Litter Control Act, S.C. Code of Laws 44-67-10 to 44-67-130.

1. 44-67-110 - Provides ticket writing authority for violations of the Litter Control Act.
2. 16-11-700 - General criminal provision enforcing Litter Control Act; contains misdemeanor provision for a violation of less than 15 pounds with a penalty of not less and \$100 or more than \$200 or imprisonment for not more than 30 days;

Misdemeanor provision for a violation of more than 15 pounds but less than 500 pounds with a penalty provision of not less than \$200 nor more than \$500 imprisonment for not more than 90 days; and

Misdemeanor provision for a violation of more than 15 pounds but less than 500 pounds with a penalty provision of not less than \$500 nor more than \$1000 and/or imprisonment for not more than one year.

Other statutes dealing with litter

3. 48-53-30 - Misdemeanor provision making it unlawful to transport litter on a highway without a trap preventing load from escaping; provides for a penalty of not less than \$50 nor more than \$200.
 4. 56-5-4100 - Misdemeanor provision making it unlawful to transport rock, gravel, stone, or the like so as to allow its escape; provides for a penalty of \$100.
- d. Hazardous Substances Act, S.C. Code of Laws 23-39-10 to 23-29-120.
1. 23-39-40 - Outlaws misbranding of hazardous substances and other similar offense.
 2. 23-39-50 - Strict liability misdemeanor provision setting forth penalties for violations of 23-39-40; provides for a penalty of not more than \$500 and/or not more than 90 days for the first offense and a penalty of not more than \$3,000 and/or not more than one year for a second or subsequent offense or acts committed with the intent to defraud or mislead.
- e. Safe Drinking Water Act, S.C. Code of Laws 44-55-10 to 44-55-100.
1. 44-55-80 - Outlaws failure to comply with regulations promulgated pursuant to the act and the rendering of any public water supply inoperable or unusable by means of contamination vandalism, etc.
 2. 44-55-90 - Criminalizes willful violations of 44-55-80 as a misdemeanor and provides for a penalty of not more than \$10,000 for each day of violation and/or not more than one year in prison.
- f. Infectious Waste Act, S.C. Code of Laws 44-93-10 to 44-93-240.
1. 44-93-140 - Outlaws failure to comply with the Infectious Waste Management Act which sets forth storage, transportation, and disposal requirements designed to safeguard the public from exposure to medical waste.
 2. 44-93-150(c) - Criminalizes willful violations of DHEC regulations, procedures, or standards regarding infectious waste as a misdemeanor and provides for a penalty of not more than \$10,00 for each day of violation and/or not more than one year in prison for a first offense; for a second or subsequent offense, provides for a penalty of not more than \$25,000 for each day of violation and/or not more than two years in prison.

g. Underground Petroleum Environmental Response, S.C. Code of Laws, 44-2-10 to 44-2-140.

1. 44-2-140 - Criminalizes willful violations of DHEC regulations and orders regarding underground storage tanks as misdemeanor and provides for a penalty of not more than \$25,000 for each day of violation and/or not more than one year in prison.

h. Coastal Zone Management Act, S.C. Code of Laws, 48-39-10 to 48-39-220.

1. 48-39-220 - Outlaws filling removing, dredging, draining, or erecting any structure on or in any way altering "critical area" without a permit from the Coastal Council (with noted exceptions).
2. 48-39-220 Strict liability provision minimizing alteration of more than 225 square feet of "critical area" without a permit from Coastal Council as a misdemeanor, and provides for a penalty of not more than \$5,000 for each day of violation and/or not more than six months in jail for a first offense and/or not more than one year for second offense.

i. Pesticide Control Act, S.C. Code of Laws 46-13-10 to 46-13-240.

1. 46-13-180 - Criminalizes willful violations of the Pesticide Control Act or regulations promulgated pursuant thereto as a misdemeanor, and provides for a penalty of not more than \$100 for each day of the violation or imprisonment for not more than 30 days for a first offense; a penalty of not more \$500 and/or not more than \$1,000 for each day of violation and/or not more than 90 days for the third offense.

j. Atomic Energy Radiation Control Act, S.C. Code of Laws 13-7-10 to 13-7-460.

1. 13-7-80 - Criminalizes violations of the Atomic Energy and Radiation Act, negligent or otherwise, as a misdemeanor, and provides for a penalty of not less than \$100 or more than \$500 for each day of violation, and/or not more than one year in prison.

2. OTHER CRIMINAL CHARGES USEFUL IN SECURING A CONVICTION FOR ENVIRONMENTAL VIOLATIONS.

a. Conspiracy - S.C. Code of Laws 16-17-410.

1. Defined as the combination between two or more persons for the purpose of accomplishing a criminal or unlawful act, or an act which is legal through criminal or unlawful means

b. Aiding and Abetting - common law.

- c. False Pretenses - S.C. Code of Laws 16-13-240.
 - 1. Defined as the act of any person by the means of false pretense or representation of obtaining the signature of any person to any written instrument; or obtaining from another person any chattel, money, valuable security or other property, real or personal, with intent to cheat and defraud any person of that property.
 - 2. Misdemeanor punishable by a fine not greater than \$500 and 3 years imprisonment. (There is a provision for magistrate's level offense where the value of the instrument of property does not exceed \$200)
- d. Forgery - S.C. Code of Laws 16-13-10.
 - 1. Applies to more than negotiable instruments - "to any writing".
- e. Obstruction of Justice - S.C. Code of Laws 16-9-370.
 - 1. Defined as person taking money or reward through an express or implied agreement or undertaking to compound or conceal an offense or not to prosecute or give evidence.
 - 2. Misdemeanor punishable in the case of a felony by not more than \$5,000 and/or 1 year, and in the case of a misdemeanor by a fine of not more than \$100 and/or 3 months.
- f. Perjury - S.C. Code of Laws 16-9-10.
 - 1. Statement must be touched by an arm of the court.
 - 2. Punishable by a fine of \$100 and not less than 6 months and not more than 7 years.
- g. False Swearing - S.C. Code of Laws 16-9-30.
 - 1. Defined as willfully and knowingly swearing falsely in taking any oath required by law or administered by any person permitted by law to administer such oath.
 - 2. Felony punishable by a fine of \$100 and not less than 6 months and not more than 7 years.
- h. Involuntary Manslaughter - S.C. Code of Laws 16-3-60.
 - 1. Defined as the unlawful killing of another without malice, but with reckless disregard of the safety of others.
 - 2. Felony punishable by incarceration for not less than 3 months nor more than 3 years.

- i. Assault and Battery and Assault and Battery of a High and Aggravated Nature - common law offenses.
- j. Knowing Endangerment - common law.

ENCL ii TO TAB f TO APP I ANNEX C TO THE CHARLESTON O&H ACP
SCIENTIFIC SUPPORT COORDINATOR

The **Scientific Support Coordinator** (SSC), in accordance with the National Contingency Plan, will provide the federal On-Scene Coordinator (FOSC) scientific advice with regard to the best course of action during spill/release response. The SSC will obtain consensus from the Federal Natural Resource Trustee Agencies and provide spill trajectory analysis data, information on the resources at risk, weather information, tidal and current information, etc. The SSC will be the point of contact for the Scientific Support Team from the National Oceanographic and Atmospheric Administration (NOAA) Hazardous Material Response and Assessment Division.

- ◆ Coordinating synthesis and integration of environmental information required for spill response decisions, including spill movement trajectories, determining resources at risk, and environmental trade-offs for different clean up and protection strategies.
- ◆ Identifying scientific issues affecting the response and work with the scientific community to reach a consensus on these issues.
- ◆ Coordinating requests for assistance from State and Federal agencies regarding scientific studies.
- ◆ Assist JIC and Unified Command in addressing scientific questions from the media and the general public in press briefings, public meetings, and preparation of fact sheets and briefing tools.
- ◆ Reviewing Incident Action Plan for effectiveness.
- ◆ Assisting Operations Section with tactical decisions during the nascent phase of the incident.
- ◆ Assisting the Planning Section with strategic planning during the production phase of the incident.
- ◆ Keeping the Incident Commander informed regarding significant events, occurrences, or activities.
- ◆ Maintaining a Unit/Activity Log (ICS 214).

ENCL iii TO TAB f TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
DISPOSAL (WASTE MANAGEMENT) SPECIALIST

The **Disposal Specialists** responsible for managing and supervising operations associated with the transfer, storage, transportation, and disposal of liquid, solid and/or hazardous wastes generated during response operations. The Disposal Specialist shall:

- ◆ Provide the Planning Section Chief with a Disposal Plan that details the collection, temporary storage, transportation, recycling, and disposal of all anticipated response waste.
- ◆ Direct the collection, temporary storage, transportation, recycling, and disposal of recovered wastes.
- ◆ Develop a comprehensive Waste Management Plan to cover all current and projected disposal operations. Include a waste segregation plan to facilitate this process.
- ◆ Estimate the volume of waste that may be recovered and ensure adequate resources and logistics support are provided.
- ◆ Develop a comprehensive Waste Management Plan to cover all current and projected disposal operations. Include a waste segregation plan to facilitate this process.
- ◆ Advise Operations Section Chief on actions that could be taken to minimize generation of waste. (pre-cleaning beach of flotsam/jetsam prior to impact, etc..)
- ◆ Manage temporary storage sites and prevent secondary discharges or cross contamination.
- ◆ Confirm the laboratory results characterizing the waste as hazardous or non-hazardous and prepare required RCRA manifests as required.
- ◆ Confirm the capacities of recycling or disposal site.
- ◆ Report to the Planning Section Chief on status disposal efforts, as scheduled.

ENCL iv TO TAB f TO APP I TO ANNEX C TO THE CHARLESTON O&H ACP
ALTERNATIVE RESPONSE TECHNOLOGY

The **Alternative Response Technology (ART) Specialist** is responsible for evaluating the opportunities to use ART, including dispersant or other chemical countermeasures, in-situ burning, and bioremediation. The specialist will conduct the consultation and planning required to deploy a specific ART, and articulate the environmental trade-offs of using or not using the specific ART. The ART Specialist shall:

- ◆ Determine resource needs.
- ◆ Gather data pertaining to the spill including spill location, type and amount of petroleum spilled, physical and chemical properties, weather and sea state, and resources at risk.
- ◆ Identify available ART that may be effective on the incident commodity.
- ◆ Review daily assignments to identify environmental issues that must be considered in planning for and conduct of ART field operations.
- ◆ Prepare and update alternative response strategies and tactical operations plans that anticipate changing requirements.
- ◆ Evaluate appropriate opportunities to effectively use alternative response technologies (ART), including dispersants or other chemical counter measures, in-situ burning, bioremediation, or other alternative response technologies.
- ◆ Conduct the planning and consultation required to apply a specific ART to response.
- ◆ Identify environmental trade-offs associated with application of a specific ART.
- ◆ Provide the Planning Section Chief with detailed recommendations and plans regarding the applicability of a specific ART.
- ◆ Develop protocols for testing and monitoring the effectiveness of oil spill cleanup agents.
- ◆ Report to the Planning Section Chief on proposed response actions and on the efficiency of ART applications, as scheduled.
- ◆ Maintain Unit/Activity Log (ICS 214).

APPENDIX II TO ANNEX C TO THE CHARLESTON OIL & HAZMAT ACP GENERAL PROTECTION STRATEGY PRIORITIES

1. GENERAL. This Appendix provides general considerations when the FOOSC and the Area Committee develop the protection portion of a clean up operation. The goal of protection is to prevent or limit corollary damage to areas that were not initially involved in the incident.
2. CONSIDERATIONS. When developing a protection strategy, the following are the order of issues to be considered:
 - ◆ Human Life and Health
 - ◆ Environmental Damage and Consequences, and
 - ◆ Economics

Since these items are so intertwined, response decisions will be made based on the severity and location of the incident with appropriate input from the Area Committee team to help determine the best response mix.

3. PRODUCT: OIL VS HAZMAT. Many of the strategies discussed in this section were developed during responses to oil spill responses. Response to hazardous substances and materials are in many respects similar to responses to oil discharges. There are however, significant differences.

The nature of the hazards posed by hazardous materials releases requires a much more cautious approach. Personnel involved in hazardous substance response must be properly trained and equipped to carry out the necessary response functions.

4. PROTECTION METHODOLOGIES. Protection and rapid collection are the best strategies for the environmentally sensitive areas. The Natural Resource Trustees should be consulted when developing strategies and methodologies to mitigate incidents in the most environmentally sensitive areas, as well as to set standards early in the operation to determine when clean is clean enough.

- a. Barrier Boom. For smaller spills, it may be possible to deploy boom around the area that may be impacted by the spill. This may not be feasible in the case of larger spills due to the amount of boom required. One methodology may be to place barrier boom across the mouths of creeks that lead back into areas of marsh.

- b. Stair-step Boom. Stair-step booming to collection points is an effective method to help prevent the polluting product from spreading via the ICW into other river systems.

- c. Currents. In the ICW and the main river channels, currents in excess of 2.5 knots can be expected. In many of the creeks, currents of 1 knot can be expected.

- d. Tidal Ranges. Tidal ranges of 5 to 7 feet can render barrier boom ineffective at certain stages of the tide in many locations. At high tide, oil is expected to directly inundate the marsh face. However, the density of marsh grasses may limit the distance into the marsh that the oil

can reach into the area.

e. Collection points and Vacuum trucks. Some of the collection points that are identified in this ACP are also suitable sites to be teamed with vacuum trucks and skimmer units.

f. Dispersants or Neutralizers. Since not all of the environmentally sensitive sites are appropriate for mechanical protection and mechanical pollutant removal combined with the depth of water, shoreline type, and the location of area industries that are most likely to have a large spill or release, dispersants or neutralizers may prove to be a viable option for some incidents in the area covered by this ACP.

5. PROTECTION PRIORITIES BASED ON ENVIRONMENTAL SENSITIVITY. The environmental sensitivity levels in the Charleston AOR have been grouped into the following three sensitivity levels:

- ◆ High: Marshes and tidal flats.
- ◆ Moderate: Beaches, sheltered rocky shores and seawalls.
- ◆ Low: Exposed rocky shores and seawalls.

6. SPECIFIC RECOMMENDATIONS. The following are specific recommendations for responding to spills or releases according to environmental sensitivity.

a. High. These marshy shorelines are very sensitive to mechanical damage from foot or vehicle traffic. A decision should be made to what will ultimately cause the most damage: the pollutant that is already there, or the corollary damage that might be caused by the mechanical entry onto the area. One mechanical response might be to apply cold water under low pressure from a boat to herd the oil out of the marsh. The most environmentally desirable response may be to leave the product where it is, and to let natural forces such as the weather remove the pollutant.

b. Moderate.

- (1) **Beaches.** These shorelines are generally beaches. They are less sensitive to mechanical damage than high sensitivity shorelines. As a result, shoreline cleanup from the shore as well as boats is a viable option. Low pressure, cold water may be used to rinse off contaminated shorelines. The pressure of the water must be kept sufficiently low so as not to cause erosion on the beach. As with the highly sensitive areas, it is very possible that the clean up may be more damaging to the ecology than the initial spill or release. Mechanical removal of sand from sandy beaches might be considered in the situation where the impacted area is used for recreation.
- (2) **Sheltered Rocky Shoreline and Seawalls.** These areas might be areas where high pressure, cold water may be safely used on sheltered rocky shores and seawalls.

c. Low. High pressure, cold water washing and mechanical removal of oil from this type of shoreline are the clean up method of choice for exposed rocky shores and seawalls. Hot water or steam cleaning must not be used in areas where any viable marine life exists. Hot water or steam cleaning has been shown to delay significantly the return of normal flora and fauna following a spill cleanup.

7. DETERMINING COMPLETENESS OF CLEAN UP OPERATIONS. The decision to terminate clean up operations will be made by the FOSC with the advice of state and local agencies. Operations will generally stop when in the opinion of the OSC and the advisors, the operation starts to cause more environmental disruption than the original incident, or when the goals set early in the operation are met.

**TAB a TO APPENDIX II TO ANNEX C OF THE CHARLESTON OIL & HAZMAT ACP
SURFACE WATER INTAKES, MUNICIPAL AND INDUSTRIAL**

Listed in this section are the locations of selected "significant" water intakes. Those selected are important to either public health and safety or major industry.

<u>INTAKE DESCRIPTION</u>	<u>LOCATION</u>
Bucksport Water Plant	Bull Creek
Myrtle Beach Water Plant	ICW
Windsor Plantation Crawfish Pond	Black River
Kiethfield Plantation Crawfish Pond	Black River
Georgetown County Water and Sewer	Waccamaw River
Esterville Plantation	Winyah Bay
USC Baruch Institute	Town Creek Tributary
Springteen Plantation Shrimp Ponds	Duck Creek Tributary
Annadale Plantation Shrimp/Crab Ponds	Duck Creek Tributary
SC Electric and Gas Williams Station	Back River
Bayer Plant	Back River
Amoco Chemicals	Back River
Naval Weapons Station Nuclear Reactor	Cooper River
SCDNR Marine Resources Division	Charleston Harbor
SCDNR Hatcheries	Charleston Harbor
Palmetto Aquaculture	Broad River
Oakgrove Plantation	Broad River
Edisto Shrimp Company	Steamboat Creek

TAB b TO APPENDIX II TO ANNEX C TO THE CHARLESTON OIL & HAZMAT ACP
ENDANGERED SPECIES ACT (ESA) CONSULTATIONS

1. GENERAL. Forthcoming guidance from COMDT will include a discussion on ESA Consultations. The following information is provided for background information until that guidance arrives.

2. ESA BACKGROUND.

a. Goal. Upon signing the Endangered Species Act (ESA) on December 28, 1973, (which replaced the Endangered Species Conservation Act of 1969) President Nixon stated: "Nothing is more priceless and more worthy of preservation than the rich array of animal life with which our country has been blessed." This statement defines the ESA's ultimate purpose, which is to conserve the Nation's natural heritage for the enjoyment and benefit of current and future generations. All of the National Marine Fisheries Services' (NMFS') protected resources programs concentrate on the long-term conservation and restoration of imperiled marine species.

b. Purpose. The ESA provides for the conservation of species that are in danger of extinction throughout all or a significant portion of their range. "Species" is defined by the Act to mean either a species, a subspecies, or, for vertebrates only, a distinct population.

c. "SECTION 7".

- (1) Once a species is listed, recovery plans are prepared which identify conservation measures to be initiated to improve the species' status. In addition, Section 7 of the ESA requires all Federal agencies to use their authorities to conduct conservation programs and to consult with NMFS (or USFWS) concerning the potential effects of their actions on any species listed under the ESA.
- (2) Consultations occur on an on-going basis under Section 7 with Federal action agencies to avoid, minimize or mitigate the impacts of their activities on listed species. NMFS also reviews non-Federal activities that may affect species listed under the ESA and issues Section 10 permits for the incidental take of those species.

TAB c TO APPENDIX II TO ANNEX C OF THE CHARLESTON OIL & HAZMAT ACP CHEMICAL COUNTERMEASURES

References: (a) EPA Use of Chemical Dispersants for Marine Oil Spills (EPA/600/R-93/195 Nov 93)

(b) COMDTNOTE 16465, Dispersant Application MOA with USAF, dated 30 September 1996

1. USAGE FOR OIL SPILLS. Discussions of chemical countermeasures in this section will be limited to dispersants. The information on dispersants for this area can be found in the Federal Region IV Dispersant Usage Plan. The State of South Carolina has a case by case Governor approval requirement for use of dispersants. There are no preapproved locations for the use of dispersants in this area.

2. OIL SPILL CONSIDERATIONS.

a. Environmental Sensitivity. The area covered by this plan contains a very high percentage of environmentally sensitive areas. The environmental sensitivity is primarily due to marsh habitat, shore birds, open shellfish beds, and habitat for the shortnose sturgeon, an endangered species. Detailed description of the environmental sensitivity of the area may be found in section A.IV.b to this plan.

b. Tides. The large tidal range and associated currents coupled with the extensive marsh habitat make protection of sensitive shoreline difficult. The typical tidal range is five to seven feet. Currents of up to 2.5 knots are common in the ICW and main river channels. Currents in excess of 1 knot are common in tributary creeks that drain marsh areas.

c. Time. The environmental sensitivity of the Charleston AOR requires rapid removal of oil from the water. It is unlikely that sufficient mechanical clean up equipment can be brought to the spill quickly enough to prevent significant environmental damage. When a significant spill occurs, which may impact marsh areas, rapid and serious consideration must be given to the use of chemical countermeasures.

d. Offshore.

- (1) Impact area. Offshore spills in the COTP Charleston AOR are considered unlikely. In the event that one should occur, the projected area in which the oil would impact the shoreline, along with the characteristics of the oil, will determine whether dispersants should be considered as a clean up method.
- (2) Dispersants might be considered for use in water depths greater than 30 feet when oil is projected to impact areas of marsh or gaps between barrier islands. These areas are judged to be essentially impossible to protect using boom. Damage from the spilled oil, especially to shorebird nesting areas, is likely to be much more severe than the damage caused by the dispersed oil and dispersant.

- (3) If the oil is predicted to impact sand beaches with little likelihood of passing between barrier islands or entering the marsh areas, the environmental reasons for using dispersants are greatly reduced. While this does not preclude the use of dispersants to protect recreational resources, it does reduce the ecological benefit.

e. Inshore. In general, dispersants should not be considered for use in inshore areas (harbors, ICW, rivers, and creeks). In these areas the water depth is generally too shallow and the proximity of fauna living in the water column too close to allow successful dispersion without significant damage to the fauna. While failing to disperse oil in these areas will cause damage to wading and diving birds, marsh mammals, and intertidal organisms, damage from oil remaining on the surface is likely to be less severe than the damage caused to organisms living in the water column, especially if devices, such as noise cannons, are employed to frighten birds to keep them away from the spill site.

- (1) Possible Location. The Cooper River from the Mark Clark Expressway Bridge south to the south end of the former Charleston Naval Station has been identified as an area that might be a desirable location for the use of dispersants. This area is characterized by a deep channel (> 40 ft.) which generally hugs the west bank. East of the channel is a wide stretch of water where depths are normally 15 feet or less. The primary water flow and therefore mixing area is within the channel. The western shoreline in this area is significantly industrialized. There are only a few small marsh areas and one creek. The east shoreline is fringe marsh backed by dikes. Shorelines up and downstream from this area are significantly more environmentally sensitive. They can be characterized as marsh and tidal flats.
- (2) Product. In addition to the physical characteristics of the area which make it a desirable location for the use of dispersants, this area also contains most of the petroleum storage and transfer facilities in the area. Although these facilities have a very good environmental record, this is the most likely location for a significant spill. The primary products handled by these facilities are light fuel oils and lubricating oil base stocks. While a light fuel oil spill is not a candidate for dispersant use, a spill of lubricating oil is. [One oil handled by one of these facilities has been tested and found to be both very dispersable and very resistant to weathering.]

f. Pre-event Studies. Based on the favorable indication for the use of dispersants, and the lack of a local stockpile dispersants, personnel and application equipment, companies which handle heavy oils in this area should consider the use of dispersants in their spill response plans for both economic and environmental reasons. While it is unlikely that pre-approval will be obtained, significant reductions in the time required for approval can be made if the following information is known in advance:

- Weathering characteristics of the oil
- Dispersability of the oil
- Exact type of dispersant that will be proposed
- Toxicity of the chosen dispersant on local marine species
- The proposed method for dispersant application

- The availability of equipment for applying dispersant

Even if all the information indicated above is available, specific site conditions such as tides and weather may preclude the use of dispersants.

3. CHEMICAL COUNTERMEASURES FOR HAZARDOUS SUBSTANCES/ MATERIALS RELEASE RESPONSES.

a. There is no single chemical agent, release mitigating substance, device, or technology that would be considered suitable for generic use on all potential releases of hazardous substances shipped through the port of Charleston. Responses to hazardous substance releases will be conducted utilizing all available guidance with regards to containment, neutralization, recovery and safe handling of the specific product released.

b. The decision to use special countermeasures shall be evaluated on a case-by-case basis with careful consideration as to safety, effectiveness, and potential impact on the environment. Use of chemical countermeasures shall be approved by appropriate RRT members, state and local agencies, and must receive approval for use by the OSC.

TAB d TO APPENDIX II TO ANNEX C OF THE CHARLESTON OIL & HAZMAT ACP
NATIONAL HISTORIC PRESERVATION ACT (NHPA) CONSIDERATIONS

THIS SECTION IS RESERVED, WAITING FOR COMDT GUIDANCE

